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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,931	04/28/2005	Andrew Butterworth	STHP-018	5683
24353	7590	08/27/2009	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVENUE SUITE 200 EAST PALO ALTO, CA 94303				HOEKSTRA, JEFFREY GERBEN
3736		ART UNIT		PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/507,931	BUTTERWORTH, ANDREW
	<b>Examiner</b>	<b>Art Unit</b>
	JEFFREY G. HOEKSTRA	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 June 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 23-53 is/are pending in the application.  
 4a) Of the above claim(s) 32-35,43,44,52 and 53 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 23-31,36-42 and 45-51 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 September 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission(s) filed on 05/13/2009 and 06/24/2009 have been entered.

### ***Notice of Amendment***

2. In response to the amendment(s) filed on 05/13/2009 and 06/24/2009, amended claim(s) 23, 27, 31, 36, 41, and 45-51 and withdrawn claim(s) 32-35, 43, 44, 52 and 53, is/are acknowledged. The current rejections of the claim(s) 23-31, 36-41, and 44-50 is/are *withdrawn*. The following new and/or reiterated grounds of rejection are set forth:

### ***Claim Objections***

3. Claim 36 is objected to because of the following informalities: the positive recitation of "said thermometer" in line 13 should apparently read "said device". Appropriate correction is required.

4. Claim 45 is objected to because of the following informalities: the positive recitation of "said thermometer" in line 15 should apparently read "said device". Appropriate correction is required.

***Claim Rejections - 35 USC § 112 First Paragraph***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 23-31, 36-42, and 45-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. Independent claims 23, 36, and 45, and those depending therefrom, positively recite “a removal means associated with said housing”. The original Specification and drawings do not appear to attempt to describe and/or convey any structure responsible for and/or associated with “removal”, let alone “a removal means associated with said housing”. The limitation “a removal means associated with said housing” comprises new matter and fails to comply with the written description requirement.

8. Independent claim 23, and those depending therefrom, positively recite “a means for connecting said thermometer to means for reading and interpreting said recorded data, wherein said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said vagina of said subject mammal”. The original Specification and drawings do not appear to attempt to describe and/or convey any structure responsible for and/or

associated with “a means for connecting said thermometer”, let alone “said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said vagina of said subject mammal”. The limitations “a means for connecting said thermometer” and “said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said vagina of said subject mammal” comprise new matter and fail to comply with the written description requirement.

9. Similarly, independent claim 36, and those depending therefrom, positively recite “a means for connecting said device, once removed from said vagina of said subject mammal, to means for reading and interpreting said recorded data, wherein said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said vagina of said subject mammal”. The original Specification and drawings do not appear to attempt to describe and/or convey any structure responsible for and/or associated with “a means for connecting said device”, let alone “a means for connecting said device, once removed from said vagina of said subject mammal, to means for reading and interpreting said recorded data, wherein said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said vagina of said subject mammal”. The limitations “a means for connecting said device” and “a means for connecting said device, once removed from said vagina of said subject mammal, to means for reading and interpreting said

recorded data, wherein said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said vagina of said subject mammal" comprise new matter and fail to comply with the written description requirement.

10. Similarly, independent claim 45, and those depending therefrom, positively recite "a means for connecting said device, once removed from said ear or said vagina of said subject mammal, to means for reading and interpreting said recorded data, wherein said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said ear or said vagina of said subject mammal". The original Specification and drawings do not appear to attempt to describe and/or convey any structure responsible for and/or associated with "a means for connecting said device", let alone "a means for connecting said device, once removed from said ear or said vagina of said subject mammal, to means for reading and interpreting said recorded data, wherein said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said ear or said vagina of said subject mammal". The limitations "a means for connecting said device" and "a means for connecting said device, once removed from said ear or said vagina of said subject mammal, to means for reading and interpreting said recorded data, wherein said means for connecting is configured to be connected to said means for reading and interpreting said recorded data when said thermometer is removed from said ear or said vagina of

said subject mammal" comprise new matter and fail to comply with the written description requirement.

***Claim Rejections - 35 USC § 112 Second Paragraph***

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 23-31, 36-42, and 45-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. The terms "a long period of time" and "easily lost" in independent claims 23, 36, and 45 are relative terms which render the claim indefinite. The terms "a long period of time" and "easily lost" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The scope of the invention is indeterminate with respect to the temporal duration the thermometer remains in the vagina of a subject mammal and with respect to the magnitude of difficulty of the thermometer being "lost".

14. The Examiner notes independent claim 23, 36, and 45 positively recite means-plus-function limitations, invoking the provision under 35 U.S.C. 112 Sixth paragraph.

15. The following claim limitations in independent claim 23, 36, and 45 are being treated on the merits as means-plus-function limitations:

- “a means for connecting” and
- “means for reading and interpreting said record data”.

16. The following claim limitations in independent claim 23, 36, and 45 are *not* being treated on the merits as means-plus-function limitations because they do not appear to invoke 35 U.S.C. 112 Sixth paragraph:

- “a temperature sensing means which generates” (e.g. a thermistor, see Specification at least pages 6-8);
- “a temperature recording means... records” (e.g. a memory chip, see Specification at least pages 6-8); and
- “a removal means”.

17. Claims 23-31, 36-42, and 45-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

18. Claim element “a means for connecting” is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The original disclosure with respect to at least the elected electronic thermometer embodiment and “a means for connecting said thermometer to means for reading and interpreting said recorded data” does disclose “a signal means” which may be for example a light output or a radio transmitter that sends an alarm signal (see Specification at least pages 6-8). However it appears that the scope of invention as

claimed requires the sensed and recorded data to be analyzed by the "means for reading and interpreting" and that the recorded data is provided to the "means for reading and interpreting" via the "means for connecting" only when the thermometer is removed from the subject mammal's vagina. Not only is "a means for connecting" new matter as set forth hereinabove, the written description fails to disclose the structure corresponding to "a means for connecting".

19. Applicant is required to:

- (a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or
- (b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).
- If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:
  - (a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or
  - (b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification,

perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

20. Claims 23-31, 36-42, and 45-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

21. Claim element “means for reading and interpreting said record data” is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function. The original disclosure with respect to at least the elected electronic thermometer embodiment and “means for reading and interpreting said record data” does disclose a “computer program” that may be used to compare sensed data to stored data by means of a discrimination function (see Specification at least pages 6-8). However it appears that the scope of invention as claimed requires a “means for reading and interpreting said record data”. The scope of the claims is indeterminate with respect to what structure is associated with the “means for reading and interpreting said record data” because as disclosed the structure could possibly be a “computer program” and/or or a “discrimination function”.

22. Applicant is required to:

- (a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

- (b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or
  - (c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function.
- For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

***Claim Rejections - 35 USC § 102***

23. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

24. Claims 23-31, 36-42, and 45-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Guice et al. (US 2002/0010390 A1, hereinafter Guice).

25. For independent claim 23, Guice discloses and shows a vaginal indwelling thermometer for use in the vagina of a subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179) (as best seen in Figures 12, 13, and 17-22), the thermometer comprising *inter alia*:

- a housing (293) (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179) enclosing:
- a temperature sensing means (the temperature sensing thermistor in paragraphs 135-137 and 179) (as best seen in Figure 19) which generate data indicative of the

- per vaginam* temperature of the subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179);
- a temperature recording means (memory storage chip 286) (as best seen in Figure 19) (paragraphs 135-137) integral with the temperature sensing means (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179), wherein the temperature recording means records temperature data generated by the temperature sensing means (paragraphs 135-137);
  - a removal means (wire member for removal 301) (as best seen in Figure 19) (paragraph 179) associated with said housing (as best seen in Figure 19) (paragraph 179); and
  - a means for connecting (interconnect apparatus 294) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179, especially paragraph 153) said thermometer to a means for reading and interpreting (micro controller 282) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179), wherein said means for connecting is configured to be not only connected to said means for reading and interpreting said recorded data when said thermometer is removed from said vagina of said subject mammal (paragraphs 122-123, 136-137, 156, and 179), but also when said thermometer is situated in said vagina (paragraphs 122-123, 136-137, 156, and 179),
  - wherein the vaginal indwelling thermometer is configured to be left in said vagina of said subject mammal for a long period of time without causing discomfort to said subject and without being easily lost (paragraphs 155, 160-163, and 178-179).

26. For independent claim 36, Guice discloses and shows a device for the prediction of ovulation in a subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179) (as best seen in Figures 12, 13, and 17-22), the device comprising *inter alia*:

- a housing (293) (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179) configured to be left in a vagina of said subject mammal for a long period of time without causing discomfort to said subject and without being easily lost (paragraphs 155, 160-163, and 178-179);
- a temperature sensing means (the temperature sensing thermistor in paragraphs 135-137 and 179) (as best seen in Figure 19) located within said housing (as best seen in Figure 19) for generating data indicative of the *per vaginam* temperature of the subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179);
- a temperature recording means (memory storage chip 286) (as best seen in Figure 19) (paragraphs 135-137) located within the housing (as best seen in Figure 19) which records the temperature data generated by the temperature sensing means (paragraphs 135-137);
- a removal means (wire member for removal 301) (as best seen in Figure 19) (paragraph 179) associated with said housing (paragraph 179); and
- a means for connecting (interconnect apparatus 294) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179, especially paragraph 153) said device to means for reading and interpreting said recorded data (micro controller 282) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179), wherein said means for connecting is configured to be not only connected to said means for

reading and interpreting said recorded data when said device is removed from said vagina of said subject mammal (paragraphs 122-123, 136-137, 156, and 179), but also when said device is situated in said vagina (paragraphs 122-123, 136-137, 156, and 179),

- wherein said means for reading and interpreting said recorded data is configured to read said recorded data (paragraphs 17, 71-72, 123, 125, and 179) and to interpret a pre-ovulation temperature spike associated with ovulation as indicative of ovulation based on the time history profile of the subject mammal's core temperature (paragraphs 17, 71-72, 123, 125, and 179), and
- wherein said device is configured to be worn *per vaginam* for at least one complete menstrual cycle (paragraphs 122-123, 136-137, 156, and 179).

27. For independent claim 45, Guice discloses and shows a device for the detection of infection in a subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179) (as best seen in Figures 12, 13, and 17-22), the device comprising *inter alia*:

- a housing (293) (as best seen in Figure 19) (paragraphs 121-137, 154-156, 160-163, and 178-179) configured to be left in an ear or a vagina of said subject mammal for a long period of time without causing discomfort to said subject and without being easily lost (paragraphs 155, 160-163, and 178-179);
- a temperature sensing means (the temperature sensing thermistor in paragraphs 135-137 and 179) (as best seen in Figure 19) located within said housing (as best seen in Figure 19) for generating data indicative of the core body temperature of the subject mammal (paragraphs 121-137, 154-156, 160-163, and 178-179);

- a temperature recording means (memory storage chip 286) (as best seen in Figure 19) (paragraphs 135-137) located within the housing (as best seen in Figure 19) which record the temperature data generated by the temperature sensing means (paragraphs 135-137);
- a removal means (wire member for removal 301) (as best seen in Figure 19) (paragraph 179) associated with said housing (paragraph 179); and
- a means for connecting (interconnect apparatus 294) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179, especially paragraph 153) said device to means for reading and interpreting said recorded data (micro controller 282) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179), wherein said means for connecting is configured to be not only connected to said means for reading and interpreting said recorded data when said device is removed from said vagina of said subject mammal (paragraphs 122-123, 136-137, 156, and 179), but also when said device is situated in said vagina (paragraphs 122-123, 136-137, 156, and 179),
- wherein said means for reading and interpreting said recorded data is configured to read said recorded data (paragraphs 17, 71-72, 123, 125, and 179) and to interpret a pre-ovulation temperature spike associated with ovulation as indicative of ovulation based on the time history profile of the subject mammal's core temperature (paragraphs 17, 71-72, 123, 125, and 179).

28. For identical claims 24, 37, and 46, Guice discloses and shows the vaginal thermometer, wherein the temperature sensing means is an electronic temperature sensing means (paragraph 179).

29. For identical claims 25, 38, and 47, Guice discloses and shows the vaginal thermometer, wherein the temperature sensing means comprises a thermistor (paragraph 179).

30. For identical claims 26, 40, and 49, Guice discloses and shows the vaginal thermometer, the housing comprises a biocompatible material (paragraphs 155-163).

31. For identical claims 27, 41, and 50, Guice discloses and shows the vaginal thermometer, wherein the housing is formed from a material comprising thermoplastic urethane (paragraph 163).

32. For identical claims 28, 42, and 51, Guice discloses and shows the vaginal thermometer, the temperature sensing means is configured and programmed to record data at pre determined time intervals (paragraphs 100-104 and 106) based on breed and inherently comprising every 20 minutes.

33. For identical claims 29, 39, and 48, Guice discloses and shows the vaginal thermometer, wherein said subject mammal is capable of being human (as best seen in Figures 12, 13, and 17-22). The Examiner notes the subject mammal being human does not appear to further structurally define the thermometer. Moreover, Guice expressly discloses installing the thermometer in the vagina of an animal (paragraph 122).

34. For claim 30, Guice discloses and shows the vaginal thermometer, wherein the thermometer is configured to be worn *per vaginam* for at least one entire menstrual cycle (paragraphs 122-123, 136-137, 156, and 179).

35. For claim 31, Guice discloses and shows the vaginal thermometer, wherein the thermometer is configured to be used to determine ovulation in the subject mammal based on the time history profile of the subject mammal's core temperature (paragraphs 17, 71-72, 123, 125, and 179), and wherein said means for reading and interpreting said recorded data is configured to read said recorded data (paragraphs 17, 71-72, 123, 125, and 179) and to interpret a pre-ovulation temperature spike associated with ovulation as indicative of ovulation based on the time history profile of the subject mammal's core temperature (paragraphs 17, 71-72, 123, 125, and 179).

### ***Response to Arguments***

36. Applicant's arguments filed 05/13/2009 and 06/24/2009 have been fully considered but they are not persuasive. Applicant argues Guice does not disclose, teach, and/or fairly suggest "a means for connecting the thermometer to means for reading and interpreting the recorded data, where the means for connecting is configured to be connected to the means for reading and interpreting the recorded data when the thermometer is removed from the vagina of the subject mammal".

37. The Examiner disagrees. Not only does Guice disclose the claimed invention, Applicant's attention is respectfully directed to the claim rejections under 35 U.S.C. 12 first and second paragraphs as set forth hereinabove.

38. The Examiner reiterates the rejection cited above, wherein Guice discloses and shows a means for connecting (interconnect apparatus 294) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179, especially paragraph 153) said device to means for reading and interpreting said recorded data (micro controller 282) (as best seen in Figure 19) (paragraphs 122-123, 136-137, 156, and 179), wherein said means for connecting is configured to be not only connected to said means for reading and interpreting said recorded data when said device is removed from said vagina of said subject mammal (paragraphs 122-123, 136-137, 156, and 179), but also when said device is situated in said vagina (paragraphs 122-123, 136-137, 156, and 179).

39. Furthermore the Examiner notes that Applicant appears to rely heavily upon the intended use of the device for patentability. Thus, in response to applicant's argument that Guice does not disclose, teach, and/or fairly suggest "a means for connecting the thermometer to means for reading and interpreting the recorded data, where the means for connecting is configured to be connected to the means for reading and interpreting the recorded data *when the thermometer is removed from the vagina of the subject mammal*", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Not only does Guice expressly disclose the "means for connecting the thermometer to a means for reading and interpreting the recorded data" is connected when the thermometer is inside the vagina of a subject mammal, the thermometer of Guice is also configured such that the

it is connected when the thermometer is outside of the mammalian vagina as well, For example in the special packaging (see paragraph 199-202).

### ***Conclusion***

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.
41. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
42. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey G Hoekstra/  
Examiner, Art Unit 3736

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